

Claimant, an employee of the respondent, suffered a broken leg after tripping over a scaffold while carrying a window with his foreman at a construction site on the date alleged. The window, which weighed between one hundred and one hundred and twenty (100-120) pounds, was large and cumbersome. While carrying one end of the window claimant's foot became wedged against some lumber. The foreman, who was carrying the other end of the window, did not realize claimant's predicament and continued to push from the rear causing claimant's leg to snap.

After being transported to the hospital, the treating physician observed the smell of alcohol around claimant and did a blood alcohol test. The blood alcohol level was found to be .132 a finding which was stipulated to by the parties.

Claimant, an admitted alcoholic, advised he had had several beers on the date of injury but was not intoxicated. He testified it required between twelve (12) and twenty-four (24) beers in a single day in order for claimant to feel any effects. Claimant's testimony is unrebutted. No evidence was presented by the respondent that claimant was showing any signs of inebriation and there was no evidence that claimant's injury was contributed to by claimant's consumption of alcohol. Contribution must be proven by the respondent in order for this certain defense to be applied. As no evidence exists in the record that claimant's consumption of alcohol contributed to this injury the Appeals Board finds the Order of Administrative Law Judge Nelsonna Potts Barnes is appropriate and should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes of February 27, 1995, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Bryce A. Abbott, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director